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IN THE

Supreme Court of the United States

Supreme Court, U.
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MICHAEL RODAK, JR.

1972

No.
72-1088

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

GEORGE D. BROWN, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

RICHARD A. SPRAGUE
First Assistant District Attorney
ARLEN SPECTER
District Attorney

Room 666, City Hall
Philadelphia, Pa. 19107

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107

TABLE OF CONTENTS

	Page
Orders Below	1
Jurisdiction	1, 2
Question Presented	2
Constitutional and Statutory Provisions Involved	2, 3
Statement of the Case	4
Reason for Granting the Writ	
The Pennsylvania Supreme Court has, on an incorrect interpretation of This Court's holding in *Furman v. Georgia*, — U.S. —, 92 S. Ct. 2726 (1972), ordered that a judge of the Common Pleas Court in Philadelphia refrain from holding an evidentiary hearing to consider the question of the constitutionality of the imposition of the death penalty in Pennsylvania, Despite the Commonwealth's request for an opportunity to present evidence showing that the death penalty in Pennsylvania has not been imposed in violation of the standards discussed in *Furman v. Georgia*	6
Conclusion	17
Appendix	
A. Death Penalty Survey—1960 to Present	18
B. Order of the Supreme Court of Pennsylvania Entered October 18, 1972	19
C. Order of the Supreme Court of Pennsylvania Entered November 9, 1972	20

TABLE OF CITATIONS

Federal Cases: Page

Boddie v. Connecticut, 401 U.S. 371 (1971) 16

Coyle v. Pennsylvania, 392 U.S. 647 (1968) 8

Furman v. Georgia, — U.S. —, 92 S.Ct. 2726 (1972), *et seq.* 2

Lopinson v. Pennsylvania, 392 U.S. 647 (1968) 8

Phelan v. Brierley, — U.S. —, 92 S.Ct. 2875 (1972) . 8

Scoleri v. Pennsylvania, — U.S. —, 92 S.Ct. 2852 (1972) 8

Pennsylvania Cases:

Commonwealth v. Bell, 417 Pa. 291 (1965) 10

Commonwealth v. Green, 396 Pa. 129 (1965) 10, 11

Other States:

Bartholomey v. State, — Md. —, 12 Cr.L. 2313 (December 4, 1972) 15, 17

State v. Dickerson, — Del. —, 12 Cr.L. 2145 (November 1, 1972) 16

State v. Waddell, — N.C. —, 12 Cr.L. 2361 (January 18, 1973) 16

State v. Winkle, Utah Superior Ct., as reported in *The Evening Bulletin*, Phila., Pa., p. 41 (January 24, 1973) 16

Statutory and Constitutional Provisions:

Federal:

Amendment VIII, United States Constitution 2

Pennsylvania:

Act of June 24, 1939, P. L. 872, §701, as amended by Act of December 1, 1959, P.L. 1621, §1, 18 Pa. Stat. Ann. §4701 ..... 2, 5

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The Commonwealth of Pennsylvania, through the District Attorney of Philadelphia, respectfully requests that a writ of certiorari issue to review the order of the Supreme Court of Pennsylvania entered in the above-captioned case on November 9, 1972.

OPINIONS BELOW

The order of the Supreme Court of Pennsylvania granting the Writ of Prohibition is unreported and is printed as Appendix A attached hereto. The order of the Supreme Court of Pennsylvania denying rehearing in this matter is unreported and is printed as Appendix B attached hereto.

JURISDICTION

The order of the Pennsylvania Supreme Court denying

rehearing issued on November 9, 1972. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Is not the Commonwealth of Pennsylvania entitled to a hearing at which it can present factual and statistical evidence and legal analysis to demonstrate that the death penalty in Pennsylvania is not applied in violation of the standards discussed by this Court in *Furman v. Georgia*, — U.S. —, 92 S.Ct. 2726 (1972), but is instead applied to a narrowly circumscribed group of the most heinous crimes, without arbitrariness or discrimination, and under increasingly careful guidelines from the Supreme Court of Pennsylvania?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides, in pertinent part, that "cruel and unusual punishments" shall not be inflicted.

The Pennsylvania Murder Statute, Act of June 24, 1939, P. L. 872, §701, as amended by Act of December 1, 1959, P.L. 1621, §1, 18 Pa. Stat. Ann. §4701, provides, in pertinent part, that:

> All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempting to perpetrate any arson, rape, robbery, burglary, or kidnapping, shall be murder in the first degree. . . .
>
> Whoever is convicted of the crime of murder of the first degree is guilty of a felony and shall be sentenced to suffer death in the manner provided by law,

or to undergo imprisonment for life, at the discretion of the jury trying the case, which shall, in the manner hereinafter provided, fix the penalty. In the trial of an indictment for murder, the court shall inform the jury that if they find the defendant guilty of murder in the first degree, it will be their further duty to fix the penalty therefor, after hearing such additional evidence as may be submitted upon that question. . . . . After a verdict is recorded and before the jury is permitted to separate, the court shall proceed to receive such additional evidence not previously received in the trial as may be relevant and admissible upon the question of the penalty to be imposed upon the defendant, and shall permit such argument by counsel, and deliver such charge thereon as may be just and proper in the circumstances. The jury shall then retire and consider the penalty to be imposed and render such verdict respecting it as they shall agree upon.

STATEMENT OF THE CASE

This is a petition for a writ of certiorari to review an order of the Supreme Court of Pennsylvania in *Commonwealth v. George D. Brown*, granting a writ of prohibition ordering that the Honorable Leo J. Weinrott of the Common Pleas Court of Pennsylvania refrain from holding an evidentiary hearing as to the constitutionality of the imposition of the death penalty in Pennsylvania. The writ of prohibition was issued during the sentencing hearing which followed a first degree murder conviction, despite the Commonwealth's request for an opportunity to show at the hearing, by factual and legal analysis, that the death penalty in Pennsylvania has not been imposed in violation of the standards discussed by this Court in *Furman v. Georgia*, — U.S. —, 92 S. Ct. 2726 (June 29, 1972).

George D. Brown, the defendant in the case, was charged with the crime of murder, tried before Judge Weinrott and a jury, and convicted of first degree murder. Briefly stated, the facts in the case are as follows: Brown first robbed a bar, firing a gun several times in the process and wounding one person; he then fled into a private residence occupied by a woman, her eleven-year-old son and a male boarder; after the child complied with Brown's demand for money by giving him five dollars belonging to the boarder, Brown shot the latter in the chest, complaining of the meagerness of his funds. Brown then took up a search of the house which yielded more money, following which he shot the boarder four or five times more, killing him. Thereafter, he raped the mother and then shot her in the head although the wound was miraculously not fatal. Brown completed his parade of atrocities by informing the child that he had just killed the mother and was going to kill him, whereupon he proceeded to shoot the boy in the head. The child also survived with the loss of one eye.

Under Pennsylvania law, the jury determines punishment in a separate proceeding following trial on the issue

of guilt. Act of December 1, 1959, P.L. 1621, Sec. 1, 18 Pa. Stat. Ann. Sec. 4701. The penalty hearing in *Commonwealth v. Brown* took place prior to this Court's decision of the case of *Furman v. Georgia, supra*, and the jury ordered the death penalty to be imposed. Before Judge Weinrott actually imposed sentence, this Court rendered its opinion in *Furman v. Georgia*.

The Commonwealth sought to introduce at the sentencing procedure evidence bearing on the mode of imposition of the death penalty in Pennsylvania, in order to demonstrate that the death penalty in this State has not been administered arbitrarily, capriciously, or discriminatorily. Counsel for Brown requested that Judge Weinrott issue a Rule to Show Cause why the Commonwealth should not be prohibited from offering such evidence, which request Judge Weinrott refused. Brown thereafter petitioned the Supreme Court of Pennsylvania to issue a writ prohibiting Judge Weinrott from holding an evidentiary hearing as to the constitutionality of the death penalty in Pennsylvania.

On October 18, 1972, the Pennsylvania Supreme Court granted the Petition for Writ of Prohibition. The Commonwealth thereafter petitioned that court for reconsideration of its order. On November 9, 1972, the Commonwealth's petition for reconsideration was denied in a *per curiam* order.

The Commonwealth now petitions this Court for a writ of certiorari to review the judgment of the Pennsylvania Supreme Court granting the writ of prohibition.

ARGUMENT

The Commonwealth of Pennsylvania is entitled to the opportunity to present factual and statistical evidence and legal analysis during the course of a sentencing hearing after a conviction for first degree murder, in order to demonstrate that the death penalty in Pennsylvania is not applied in violation of the standards discussed by this Court in *Furman v. Georgia*, but is instead applied to a narrowly circumscribed group of the most heinous crimes, without arbitrariness or discrimination, and under guidelines from the State Supreme Court.

The order of the Pennsylvania Supreme Court granting the writ of prohibition requested by defense counsel in *Commonwealth v. Brown*, and effectively proscribing the holding of an evidentiary hearing in the trial court as to whether the death penalty in Pennsylvania has been imposed arbitrarily, capriciously, or discriminatorily was based on this Court's decision in *Furman v. Georgia*, — U.S. —, 92 S. Ct. 2726 (1972).

The per curiam order of the Court in *Furman v. Georgia* provides in pertinent part that:

> The Court holds that the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death sentence imposed, and the cases are remanded for further proceedings.

Mr. Justice Douglas, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Marshall each filed a separate opinion in support of the judgments. Since the judgments of the Court required the concurrence of each of these Justices, the holding of the Court can have no

broader application than those points which command the acceptance of all of the Justices.

Only two members of the Court, Mr. Justice Brennan and Mr. Justice Marshall, reached the question of whether capital punishment was cruel and unusual *per se* and concluded that it was. Mr. Justice Douglas, Mr. Justice Stewart and Mr. Justice White, on the other hand, did not reach the question of the *per se* constitutionality of capital punishment but concurred in the judgments of the Court, concluding that the specific death sentences before them were cruel and unusual punishment. In general, the conclusions of the foregoing three justices, whose concurrence was essential to the judgment of the case, were based on the discriminatory and/or arbitrary application of a non-mandatory death penalty as evidenced by its application in the cases before the Court, which cases arose in States other than Pennsylvania.

Specifically, Mr. Justice Stewart concluded "that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and freakishly imposed." — U.S. at —, 92 S.Ct. at 2763. He based this conclusion upon a belief that capital punishment had not been imposed on many persons convicted of crimes as reprehensible as the petitioners' acts and that the petitioners were "among a capriciously selected random handful upon whom the sentence of death has in fact been imposed." — U.S. at —, 92 S.Ct. at 2762. While it may be true that capital punishment has not been imposed on many persons convicted of crimes as reprehensible as the acts of the petitioners in *Furman* and its companion cases, in Pennsylvania no one who had committed a crime which was merely as reprehensible as the acts of those petitioners would be punished with the death penalty. Of course, in the companion cases of *Jackson v. Georgia* and *Branch v. Texas* where the crime charged was rape, death would not be a possible penalty under Pennsylvania law, since only first

degree murder is punishable by death under Pennsylvania law. 18 P.S. §4701, *supra*. However, while the penalty of death was under the statutory language a possible penalty for the felony-murder committed by Furman, the Pennsylvania practice for at least the last decade has consistently been to impose a sentence of imprisonment for life where during the course of a felony death resulted, but no violent acts were intentionally committed on the victim and where the victim's death was caused accidentally during the course of the felony. (See opinion of Mr. Justice Douglas, noting that Furman claimed that his gun went off accidentally when he fell during his escape from the burglarized premises, and that the Georgia Supreme Court accepted his version of the shooting as an accidental one during the course of the robbery. — U.S. —, 92 S.Ct. at 2754-55, fn. 48.) That is, if the factual situations presented to this Court in *Furman* and its companion cases had arisen in the state courts of Pennsylvania, in none of those instances would Pennsylvania practice have allowed imposition of the death penalty.

Indeed, the Philadelphia case now before this Court is an excellent example of the careful and appropriate way in which the death penalty has been applied in Pennsylvania, as were the only four other death cases to reach the Supreme Court from Philadelphia since the moratorium against capital punishment began in 1967. *See Lopinson v. Pennsylvania*, 392 U.S. 647 (1968), vacating and remanding 427 Pa. 284 (1967); *Coyle v. Pennsylvania*, 392 U.S. 647 (1968), vacating and remanding 427 Pa. 72 (1967), and 415 Pa. 379 (1964); *Scoleri v. Pennsylvania*, — U.S. —, 92 S.Ct. 2852 (1972), vacating death penalty in and remanding *Commonwealth v. Scoleri*, 432 Pa. 571 (1968); and *Phelan v. Brierley*, — U.S. —, 92 S.Ct. 2875 (1972), vacating death penalty in and remanding *United States ex rel. Phelan v. Brierley*, 453 F.2d 73 (3d Cir. 1972). Moreover, the Commonwealth of Pennsylvania is prepared to show that not only these cases, but the other Pennsylvania cases in which

capital punishment has been imposed would not be cruel and unusual punishment within the language of the opinions of several of the concurring Justices in *Furman v. Georgia*.

The four Pennsylvania cases above and the instant case, like the other Pennsylvania death cases, are clearly reprehensible to a degree that is almost unique even among first degree murder cases. Thus, Jack Lopinson was a restaurant owner who hired Frank Phelan to assassinate Mrs. Lopinson and his business partner in a staged robbery, and Phelan carried out the killing with a degree of viciousness which must have satisfied Lopinson's deepest hates. Anthony Scoleri climaxed a career marked by 25 convictions for robbery by robbing and murdering a shopkeeper, committing a further series of armed robberies and pistol whipping during his post-murder flight. The predictability of the death penalty in Pennsylvania can be seen from this case in which two juries and a panel of judges imposed the death penalty in three successive trials. Finally, John Coyle went into hiding in Philadelphia following robberies in New England, gunned down a Philadelphia police officer in cold blood when he caught Coyle stealing milk, and then left Philadelphia on a rampage of crime which ended in two further shootouts with the police in Massachusetts. The decision of judges or juries to impose the death penalty in such cases as these cannot be labelled capricious.

Mr. Justice Stewart specifically stated that the Court, in deciding *Furman* and its companion cases, was not faced with the need to decide whether capital punishment is unconstitutional for all crimes and under all circumstances. The *Furman* decision, according to his opinion, left open the question of whether a state legislature could constitutionally determine that certain criminal conduct is so atrocious as to warrant the penalty of death. — U.S. at —, 92 S.Ct. at 2761. In Pennsylvania, the determination that certain conduct warrants the death penalty has been a joint determination made by the legislature and the courts, the

legislature limiting the death penalty to first degree murder cases, and the courts providing increasingly careful guidelines for the determination of the appropriate penalty, *e.g.*, *Commonwealth v. Bell*, 417 Pa. (1965), and limiting the death penalty to only heinous crimes where consideration of the criminal histories and psychiatric conditions of the defendants show no mitigating factors. *Commonwealth v. Green*, 396 Pa. 129 (1965).

Mr. Justice White concluded that a non-mandatory death penalty is so rarely applied that it cannot be said to carry out any legislative policy. — U.S. at —, 92 S.Ct. at 2763-64. However, the Pennsylvania cases discussed above are, as noted above, good illustrations of the fact that within the small class of the most heinous first degree murders the death penalty is applied with considerable regularity except when there are clear mitigating factors which would make it inappropriate to sentence a given defendant to death despite the atrocious nature of his criminal acts. Mr. Justice White's opinion was based on his conclusion that there is no meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many in which it is not. — U.S. —, 92 S.Ct. at 2764. It is precisely for the purpose of demonstrating that there is such a reasonable basis for making this distinction among Pennsylvania cases, that the Commonwealth believes that an evidentiary hearing is required.

Finally, Mr. Justice Douglas concluded that a non-mandatory death penalty is unconstitutional because he believed that death sentences were often imposed on minorities or the poor. Yet, once again, the death cases from Philadelphia which have been before the Supreme Court make it clear that this is not the case in Pennsylvania. Neither Lopinson nor Phelan nor Scoleri nor Coyle was black or a member of any other minority group, although the defendant Brown in the instant case is black. Lopinson was a wealthy restaurant owner (*Cf.* Mr. Justice Douglas' statement that: "One searches our chronicles in vain for

the execution of any member of the affluent strata of this society." — U.S. —, 92 S.Ct. at 2733) and nothing in the record available to the Commonwealth indicates that either Phelan, Scoleri or Coyle was less than a member of the middle classes, although this is not true of Brown. Indeed, each of the others was represented by private counsel including a number of leading members of the bar at some time in the proceedings and Lopinson and Coyle have always been so represented. On the other hand, the Supreme Court of Pennsylvania has held that, as a matter of law, youth, mental deficiency, *negritude* and the disabilities of a ghetto childhood require the reversal of a death penalty imposed upon even the perpetrator of an atrocious crime. *See, e.g., Commonwealth v. Green*, 396 Pa. 129, *supra*. Thus, at least for more than a decade, the danger of discriminatory application of the death penalty which provided the major basis for the opinion of Mr. Justice Douglas and concerned Mr. Justice Brennan, Mr. Justice Stewart and Mr. Justice Marshall has not existed in Pennsylvania. Mr. Justice Douglas' opinion states that "a law which in the overall view reaches that result [economic and racial discrimination] has no more sanctity than a law which in terms provides the same. Thus, these discretionary statutes are unconstitutional in their operation." — U.S. —, 92 S.Ct. at 2735. If a law is proved not to reach such a result, but is instead proved to be non-discriminatory in its application as well as on its face, it would not fall under this opinion.

If this Court should order that the order below granting the writ of prohibition be vacated, thereby permitting the evidentiary hearing desired by the Commonwealth, the Commonwealth is prepared to prove that, contrary to the concerns of Mr. Justice Stewart and Mr. Justice White in their opinions in *Furman*, the death penalty in Pennsylvania has not been applied rarely or capriciously; rather death sentences were imposed on 7.91% of all defendants convicted of first degree murder in this state since 1960. Those

death penalties were imposed upon defendants in cases constituting the most heinous crimes committed in the Commonwealth in that period. Death penalties have been imposed in those cases whenever such cases arose (some of the most recent death penalties in Pennsylvania have been imposed in the cases of Donald Bryant, one of four defendants who robbed a sixty year old businessman, then beat him with a sledge hammer and finally attempted to decapitate him with a hacksaw; and the cases of Paul Gilly and Aubran Martin, convicted in the murder for hire slayings of Joseph A. Yablonski, his wife, and his daughter). Further, as to Mr. Justice Douglas' concern that the death penalty is more imposed upon members of minority groups or the poor, the Commonwealth's statistics demonstrate to the contrary.

A study of the *actual practice* in Pennsylvania over the period of 1960 to the present, as applied to the factors discussed by the United States Supreme Court Justices in *Furman v. Georgia*, reveals the following:

a. Since 1960, 430 defendants have been convicted of first degree murder in Pennsylvania. Of that number 34 (or 7.91%) have received the death penalty. Of the 430 defendants, 253 (or 58.60%) were black, and 162 (or 37.60%) were white. Of the 34 death penalties handed down in these cases, 19 (or 55.88% of death penalties) were as to black defendants and 14 (or 41.17% of death penalties) were as to white defendants. Of the 253 black defendants convicted of first degree murder, 19 (or 7.47%) of black defendants) were sentenced to death, while of the 162 white defendants convicted of first degree murder, 14 (or 8.63% of white defendants) were sentenced to death.

Thus, it can be seen that on the basis of race alone, no discrimination exists in the imposition of the death penalty in Pennsylvania.

b. Of the 430 defendants convicted of first degree murder, 310 (or 72.09% of all defendants) were represented by Court appointed counsel, and 120 (or 27.91% of all

defendants) were able to retain private counsel. Of the 310 defendants represented by Court appointed counsel, 26 (or 8.38% of these defendants) received the death penalty. Of the 120 defendants who were able to retain private counsel, 8 (or 6.66% of these defendants) were sentenced to death.

Thus, it can be seen that while defendants represented by Court appointed counsel constitute a great majority of the defendants convicted, only 1.72% more of those defendants received the death penalty as opposed to defendants represented by privately retained counsel. It is therefore apparent that on the basis of poverty alone, there is no discrimination in the imposition of the death penalty in Pennsylvania.

c. Of the 430 defendants convicted of first degree murder, 305 (or 71.43% of all defendants) demanded jury trials, and 122 (or 28.57% of all defendants) pled guilty (the nature of disposition in three cases was unavailable, therefore the model is 427 cases). Of the 305 defendants who demanded jury trials, 24 (or 7.86% of those defendants) were sentenced to death; of the 122 defendants who pled guilty, 10 (or 8.19% of those defendants) received the death penalty.

Once again, it can be seen that while a considerably higher percentage of defendants demand trial by jury, a slightly lower percentage of those defendants received the death penalty as compared to those defendants who pled guilty. Thus, it is indicated that on the basis of nature of disposition alone, no discrimination existed in the imposition of the death penalty in Pennsylvania.

d. Of the 253 black defendants convicted of first degree murder, 79 (or 31.23% of black defendants) were able to afford private counsel, while of the 162 white defendants convicted of first degree murder, 40 (or 24.69% of white defendants) were able to afford private counsel. It appears therefore that there is no correlation, in this context, between race and poverty as reflected in a defendant's ability to retain private counsel.

c. By combining the three factors discussed above at a, b and c, the lack of discrimination in Pennsylvania becomes more evident. Of the 430 total defendants, 128 (29.75% of all defendants) were black, had Court appointed counsel, and demanded trial by jury. Yet, only 8 (or 6.25% of these defendants) received the death penalty. By comparing this statistic to the fact that 7.91% of all defendants received the death penalty, it is obvious that no discrimination exists on the basis of the combination of these three factors.

It is apparent that, in Pennsylvania, the death penalty has been imposed on the basis of two dominant factors, and not on the basis of race, poverty or type of adjudication. Those factors are, in order of importance, the nature of the crime involved, and the defendant's prior criminal history. Both of these factors are such that the defendant, and only the defendant, has control of them. Of the 34 death penalties meted out in Pennsylvania since 1960, virtually all of them have been in cases which involved especially atrocious murders (*Cf.* the instant case, the Scoleri, Lopinson, Phelan and Coyle cases noted above, and the cases of John Burgess, Elmo Smith, Paul Gilly, Aubran Martin, Carl Melton, etc.).

The Commonwealth is in the process, at this time, of gathering further facts concerning the intelligence level, educational background, psychiatric history and psychological history of each of the aforementioned 430 defendants, and will be prepared to present this additional information upon the occasion of an evidentiary hearing in the instant case should this Court so permit.

The Commonwealth respectfully urges that, upon proof of these statistics, the majority of the Justices of the United States Supreme Court would uphold the death penalty as applied in Pennsylvania.

A compilation of the Commonwealth's now completed analysis of the imposition of the death penalty in Pennsylvania since 1960, in terms of the criteria discussed by Mr.

Justice Stewart, Mr. Justice White, and Mr. Justice Douglas in *Furman*, is attached hereto as Appendix A. The Commonwealth respectfully requests that this Court consider whether these statistics are not necessary to a full consideration of the application of *Furman* in Pennsylvania.

In deciding *Furman v. Georgia* and its companion cases, this Court had the benefit of briefs on behalf of counsel for the State of Georgia, the State of Texas and numerous *amici curiae*. But no brief on behalf of the Commonwealth of Pennsylvania relating to the constitutionality of the death penalty as applied in its jurisdiction was filed in that case, nor was the Commonwealth given the opportunity to present evidence in the instant case in its state courts.

Since the holding of the Supreme Court in *Furman v. Georgia* is not that the imposition of the death penalty is cruel and unusual under all circumstances but merely that it was cruel and unusual under the circumstances of the cases before the Court, *Cf. Bartholomey v. State*, — Md. —, 12 Cr.L. 2313 (December 4, 1972) (dissenting opinion), it is clearly material that the Commonwealth of Pennsylvania be given the opportunity to establish that capital punishment as applied to Pennsylvania cases is not cruel and unusual within this Court's interpretation of the Eighth Amendment. The Pennsylvania Supreme Court should have allowed the trial court to proceed with the evidentiary hearing requested by the Commonwealth, so that a factual basis could have been established for consideration of the issue.

There are, as other courts have recognized, a number of unresolved problems in the application of *Furman* to the states, which situation requires something more than the automatic vacation of death penalties. States must consider, for example, whether the Furman decision requires reversion to death penalty statutes which are mandatory in all cases. The Supreme Courts of North Carolina and Delaware, and a trial court in Utah, have held that the

Furman decision does not render capital punihsment impermissible under all circumstances, but renders it impermissible only when it is imposed in accordance with statutes making imposition discretionary with the jury. *State v. Waddell.* —— N.C. ——, 12 Cr. L. 2361 (January 18, 1973); *State v. Dickerson*, — Del. —, 12 Cr. L. 2145 (November 1, 1972); *State v. Winkle*, Utah Superior Ct., as reported in *The Evening Bulletin*, Phila., Pa., p. 41 (January 24, 1973).

In those states, as in Pennsylvania, the death penalty statutes originally were mandatory, but were later amended to provide for imposition of a penalty of life imprisonment at the jury's discretion. The state courts held that this amendment allowing for mercy had to fall under the *Furman* decision, leaving the mandatory death penalty provision in effect under state rules as to severability.

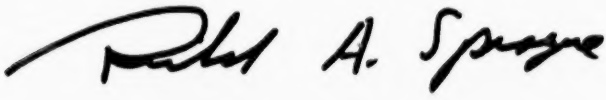
In the alternative, state courts must consider the broader issue of whether a particular state's law is in fact in violation of the *Furman* rationale, for the blanket upsetting of sentences without due consideration of that issue will further confuse the law and result in even wider discrepancies in sentencing. The notion of federal-state comity, the recognition of the fact that this country is made up of separate state governments administering different laws in different manners, requires that an individual state not have its laws stricken on the ground of unconstitutionality, where the decision relevant to determining such unconstitutionality is based on dissimilar and more inclusive laws from other states which were applied in factual contexts to which the law of the petitioning state would not have been applied. By analogy to this Court's holding in *Boddie v. Connecticut*, 401 U.S. 371, 379 (1970), that "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause," so the Commonwealth of Pennsylvania should be provided a forum in which to contest the con-

stitutionality of its duly enacted statutes, and to prepare a record from which this Court or the Pennsylvania Supreme Court can properly weigh the constitutionality of the death penalty in Pennsylvania. *Cf. Bartholomey v. State*, *supra* (dissenting opinion).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,



RICHARD A. SPRAGUE
First Assistant District Attorney
ARLEN SPECTER
District Attorney

DEATH PENALTY SURVEY—1960 TO PRESENT

		FIRST DEGREE MURDER CONVICTIONS—430 CONVICTIONS		DEATH PENALTIES—34 DEFENDANTS	
		NUMBER OF DEFENDANTS	PERCENTAGE OF GROUP	NUMBER OF DEFENDANTS	PERCENTAGE OF GROUP
AGE	Under 15	4	1.14%	0	0
	15 to 25	194	55.26%	16	8.24%
	25 to 34	93	26.52%	7	7.53%
	35 to 44	38	10.82%	5	13.10%
	45 to 54	19	5.12%	1	5.26%
	Over 55	4	1.14%	0	0
RACE	BLACK	253	58.60%	19	7.47%
	WHITE	162	37.60%	14	8.63%
SEX	MALE	414	96.28%	32	7.73%
	FEMALE	16	3.72%	2	12.50%
COUNSEL	COURT	310	72.09%	26	8.38%
	PRIVATE	120	27.91%	8	6.66%
ADJUD.	JURY TRIAL	305	71.43%	24	7.86%
	GUILTY PLEA	122	28.57%	10	8.19%

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APPENDIX B

MP-12,350
October 18, 1972

Nolan Atkinson, Jr., Esq.,
Zack, Myers & Atkinson,
320 Robinson Building,
42 South 15th Street,
Philadelphia, Pennsylvania 19102

In Re: Commonwealth of Pennsylvania vs.
George D. Brown, Defendant-Petitioner
No. 250, Miscellaneous Docket No. 19

Dear Mr. Atkinson:

This is to advise that the following Order has been endorsed on the Petition for a Writ of Prohibition, directed to Hon. Leo Weinrott, filed on behalf of the Defendant in the above captioned case:

"10/18/72.
Petition for Writ of Prohibition is granted.
s/ Per Curiam."

A certified copy of the above Order is being sent to the Court of Common Pleas, Trial Division, Criminal Section, for the County of Philadelphia, at No. 1184, May Term, 1970, and to Hon. Leo Weinrott, Judge of the Court of Common Pleas for the County of Philadelphia.

Enclosed is an Invoice in the amount of $4.00 to cover the cost of issuing the said Certificates of Order. Please remit by return mail.

Very truly yours,

Deputy Prothonotary

ENT/
Enclosure
cc: Richard A. Sprague, Esq.,
First Assistant District Attorney,
666 City Hall,
Philadelphia, Pennsylvania 19107

PAGES BOUND VERTICALLY

APPENDIX C

MP-12,399
November 10, 1972

Richard A. Sprague, Esq.,
1st Assistant District Attorney,
666 City Hall,
Philadelphia, Pennsylvania 19107

In Re: Commonwealth of Pennsylvania vs.
George D. Brown, Petitioner
No. 250, Miscellaneous Docket No. 19

Dear Mr. Sprague:

This is to advise that the following Order has been endorsed on the Petition for Reconsideration of this Court's Order of October 18, 1972 granting Petition for Writ of Prohibition, and to present oral argument, etc., filed on behalf of the Commonwealth in the above captioned case:

"11/9/72.

Petition denied.
s/Per Curiam."

Very truly yours,

Prothonotary

EMT/

cc: Nolan Atkinson, Jr., Esq.,
Zack, Myers & Atkinson,
320 Robinson Building,
42 South 15th Street,
Philadelphia, Pennsylvania 19102